

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Revision of Part 22 of the
Commission's Rules Governing the
Public Mobile Services

RECEIVED

FEB 1 1995

FCC MAIL ROOM
CC Docket No. 92-115

DOCKET FILE COPY ORIGINAL

COMMENTS TO OPPOSITION OF PETITIONS FOR RECONSIDERATION
BY
McCAW CELLULAR COMMUNICATIONS, INC.



Ron Foster
President
CellTek Corporation
4647T, Hwy 280 E., Ste 260
Birmingham, AL 35243

January 30, 1995

No. of Copies rec'd 03/11
LM/ABC/E

**COMMENTS TO OPPOSITIONS BY
MCCAW CELLULAR COMMUNICATIONS, INC.**

McCaw Cellular Communications is a wholly-owned subsidiary of AT&T. The objections made regarding ESN changes sound all too familiar. It was AT&T, which for years, made unfounded claims regarding the wired network. It claimed that use of telephone sets, other than those manufactured by its supply arm, Western Electric, would degrade the system and cause innumerable problems. It was this same Company that sought to keep subscribers paying for each and every telephone in their homes and even an additional cost for a color other than black! It was this same organization that fought so hard to keep equal access to the network from becoming a reality. They argued that the network belonged to them; it was not a public resource. AT&T sought then, as it does now, to retain a monopoly on the telecommunications network and strangle out any competition in the process. In this instance, AT&T continues to resist open and fair competition and desires to suppress the demands of the consumer. Federal Court actions have repeatedly ruled in favor of non-monopolistic, anti-trust practices purveyed by this Company and others like it.. To even suggest that the cellular network is not a public resource is ludicrous at the very least.

McCaw Cellular Communications has categorized every company and individual performing ESN modifications as nothing less than crooks, providing inferior services to the public. To quote: "In fact the purveyors of emulation technologies are selling an inferior product designed to trip off service providers by allowing individuals to obtain substandard service without having to pay for it".

There are two basic problems with their statement: a) The service provided is exactly the same as provided by the carrier in regard to the network. If it is inferior, then it stands to reason that the rest of the service must also be so. b) Nothing in the Telecommunications Act gives the common carriers a right to all the revenue of the cellular network. Indeed, McCaw needs only to look at the wired network for examples of past rulings to confirm past Federal Court and PCC positions pertaining to this matter. The carriers are not "entitled" to these additional revenues.

McCaw also points out that no cellular carrier sought reconsideration of the ESN rule. Of course not! The carriers are represented by the CTIA, which has lobbied heavily with the FCC for this rule change, motivated by the greed of the carriers and veiled as a deterrent to fraud. It does not take a rocket scientist to figure this one out!

The statement by McCaw that "a number of parties led by C-Two-Plus Technology, Inc. object to the Commission's adoption of Section 22.919" is totally inaccurate! It would be helpful if McCaw would present substantiated facts. Not everyone is a "lapdog" to some other organization. C2+ has not led any company or any individual to take any action. Objections were filed with the Commission because those involved believe the rule changes do not serve the public's best interest and are arbitrary and anti-competitive.

To clarify the record, C2+ was recently invited to join the Independent Cellular Services Association (ICSA), an association formed to represent the interest of the general public and providers of emulated services. However, as of this date C2+ has declined because of on-going litigation against the carriers. I might add that our firm is a member in good standing.

It is obvious that McCaw ignores the facts and benefits to the consumer regarding ESN changes and is underestimating the overwhelming demand and acceptance by the public for this service. It is neither deceptive or inferior. The facts bear themselves out that the service provided by our Association members is superior to that offered by the carrier and is much more cost effective to the customer.

First, the service offered by the carriers is more restrictive. The extension phone cannot be used for roaming (this does not meet FCC compatibility standards). Second, we know of no instance where the consumer saves substantially over the cost of having two separate numbers when the service (2 phones with one number) is provided by the carrier. Third, our members instruct their customers, as do the carriers, that one telephone should be kept in the "off" position.

McCaw makes a feeble attempt to associate fraud with "shadowing" an illegal phone behind the second phone. We can only assume this same situation would apply if the carrier's customer left the second telephone in the "on" position. Furthermore, this would be a rare exception, and not the rule. Fourth, our members offer a means by which more than two phones with the same number can be placed on the network. This provides a very cost effective way to allow every member of a family to have the security of a cellular telephone...without breaking the bank! Service provided by our associate members is a win-win situation for the consumer.

Lastly, our service benefits the carrier. It affords the carriers an opportunity to receive more revenue through additional airtime since more people have access to the network.

SUMMARY

We reject all of McCaw Cellular Communications objections. Paragraph 60 of the new changes to 32.919 itself refutes any claim of potential problems caused by emulated telephones. Otherwise, why would the FCC let the carrier make the determination to allow emulated service is on the network?

It's the same old anti-competitive AT&T song, only this time it's being sung by McCaw. McCaw offers no concrete reasons or documentation that substantiates any of it's claims. We view McCaw's position as uninformed and anti-trust in nature.